

William Torbitt Primary School



Freedom of information Procedure

Policy Review

This policy was reviewed and adopted at the Governing Body Meeting in September 2019

This policy is due for review in June 2021

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Freedom of Information Procedures

1. Introduction

1.1 The Freedom of Information (FOI) Act came fully into force on the 1st January 2005 and provides public access to information held by public authorities.

It does this in two ways:

- a) Public Authorities are obliged to publish certain information about their activities; and
- b) Members of the public are entitled to request information from public authorities.

The Freedom of Information Act may work alongside other laws. These include:

- Environmental Information Regulations 2004
- The General Data Protection Regulations (GDPR)
- Data Protection Act 2018
- Infrastructure for Spatial Information in the European Community Regulations 2009
- Access to Health Records Act 1990
- Local Government Acts
- Education (Pupil Information) Regulations

1.2 Detailed guidance on Freedom of Information is published by the Information Commissioner's Office (ICO) and is used as the basis of the School's policy and procedures.

A copy of the latest version of the [Guide to Freedom of Information](#) can be found on the Information Commissioner's website.

1.3 The purpose of this document is to outline the procedures we use to deal with Freedom of Information (FOI) requests. This document is complemented by the Freedom of Information (FOI) Policy that is published on Perspective Lite.

Freedom of Information Requests process:

The request for information would typically come in directly to the FOI Coordinator. However, if an FOI request comes into your service department the request is deemed to have been received by the school and the statutory clock will then begin. It is therefore vitally important that any FOI's received into your department are forwarded to the FOI Coordinator immediately.

Upon receipt by the FOI Coordinator the request will be logged and an acknowledgement will be sent to the requester stating a response should be expected within **20 working days**.

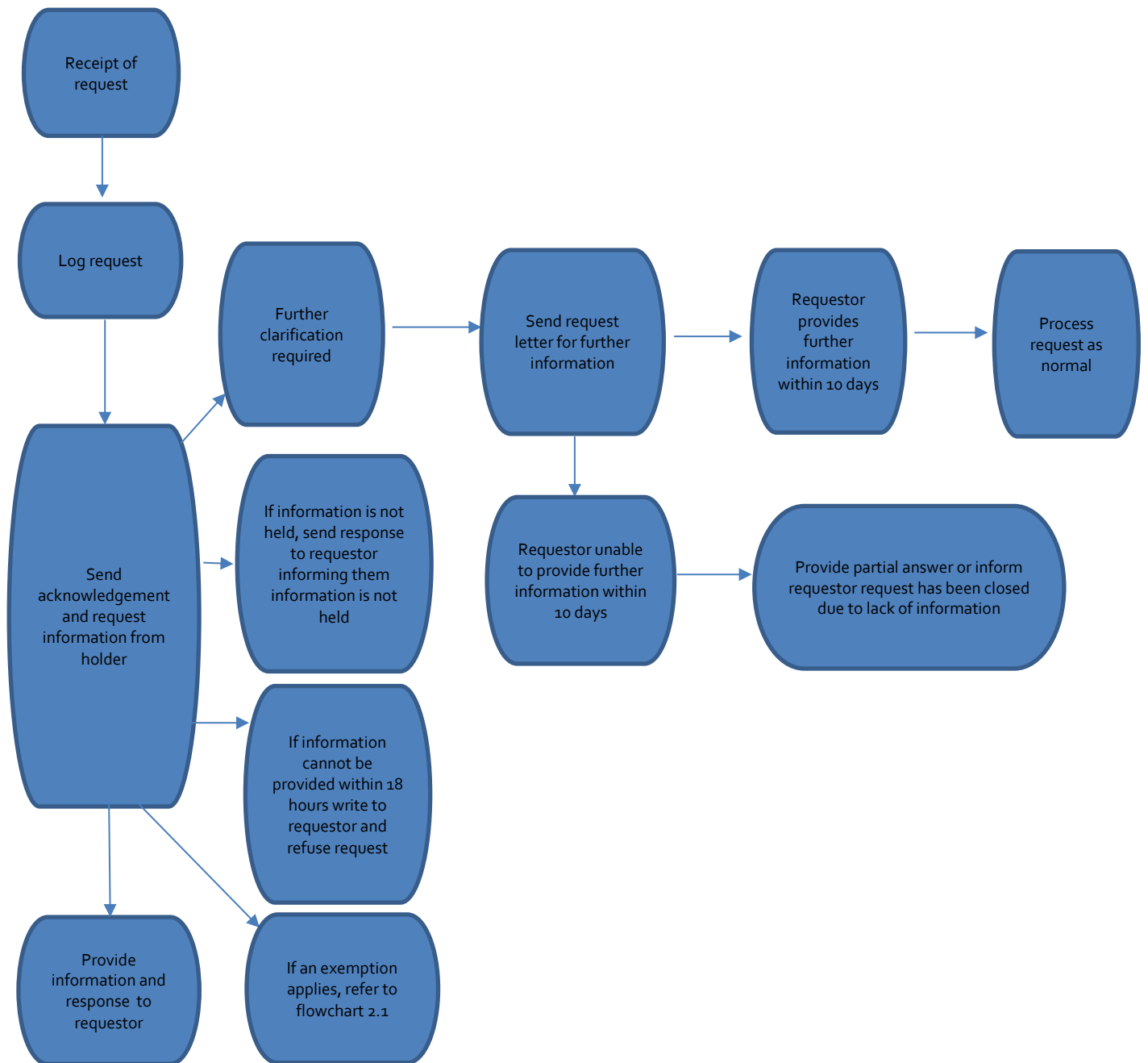
There are five main outcomes:

1. If the information is held by the school you must check whether it is in our publication scheme and/or readily available. If it is then you should provide the information as soon as possible signposting to where the open data is held. The case should then be closed.

If it is not in the publication scheme the response is created and sent out within **20 working days**.

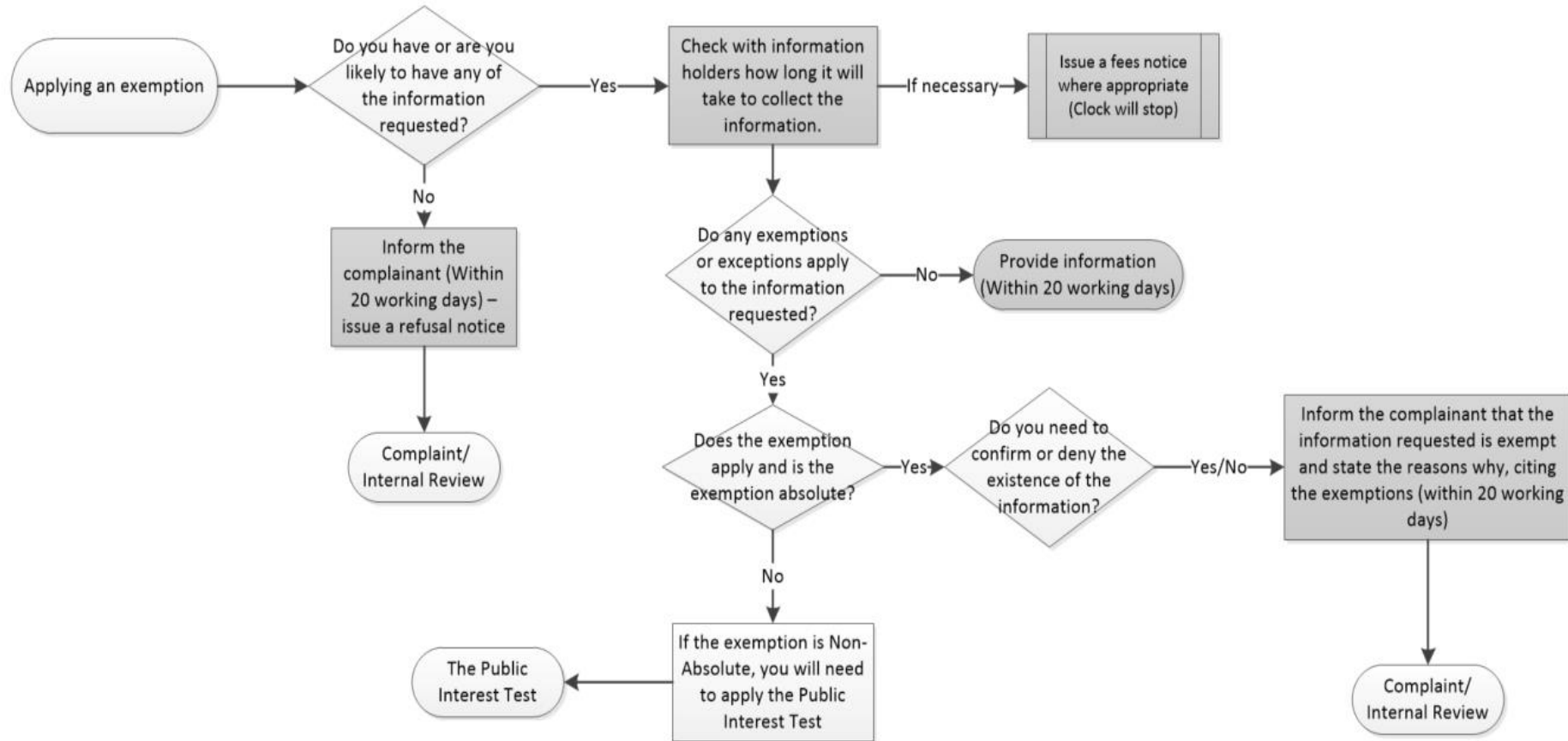
2. If further clarification from the customer, the officer should ask for more information from the requester. The clock will stop in terms of the deadline to respond on the request for information. The requester will have 10 days to give more information to the Coordinator. If they do not give you more information in that time the officer will have to give them a partial answer based upon their request if they can. Then the case can be closed. If they provide the clarification we need, the request can be processed as normal and the clock is re-started to respond within the remaining timeframe.
3. If the information is not held by the School, you will need to respond to parts of the request you can give information on or send a refusal letter.
4. If the request will exceed 18 hours of work (at the beginning of the process), the request can be refused however, you will need to provide evidence that this request will exceed 18 hours or can ask the requester to narrow the specifics of their request so the school can fulfil the request within 18 hours.
5. If there is an exemption to providing the information you should follow the process shown in **Flowchart 2.1**.

2.0 Process Map for Freedom of Information (FOI) requests.



2.1 Applying Exemptions to Requests

(Full list of Exemptions is included later in the document)



2.2 Applying the Public Interest Test

Having established that a qualified exemption(s) definitely applies to a particular case, you must then carry out a public interest test to identify if the public interest in withholding the exemption outweighs the public interest in disclosing it. In other words, unless it is in the public interest to withhold the information, it **must be released**.

Carrying out the public interest test

- a) It is worth noting that what is in the public interest *is not necessarily the same* as that which may be of interest to the public. It may be irrelevant that a matter may be the subject of public curiosity. In most cases it will be relatively straightforward to decide where the balance of the public interest in disclosure lies.
- b) However, there will inevitably be cases where the decision is a difficult one. Applying such a test depends to a high degree on objective judgement and a basic knowledge of the subject matter and its wider impact in the School. Factors to consider when weighing the public interest include:

For Disclosure	Against Disclosure
Is disclosure likely to increase access to information held by the School?	Is disclosure likely to distort public reporting or be misleading because it is incomplete?
Is disclosure likely to disclose the reasons for a decision or allow individuals to understand decisions affecting their lives or assist them in challenging those decisions?	Is premature disclosure likely to prejudice fair scrutiny, or release sensitive issues still on the internal agenda or evolving?
Is disclosure likely to improve the accountability and transparency of the school in the use of public funds and help to show that it obtains value for money?	Is disclosure likely to cause unnecessary public alarm or confusion?
Is disclosure likely to contribute to public debate and assist the understanding of existing or proposed policy?	Is disclosure likely to seriously jeopardise the School's legal or contractual position?
Is disclosure likely to increase public participation in decision-making?	Is disclosure likely to infringe other legislation e.g. Data Protection Act?
Is disclosure likely to increase public participation in political processes in general?	Is disclosure likely to create a controversial precedent on the release of information or impair the School's ability to obtain information in the future?
Is disclosure likely to bring to light information affecting public safety?	Is disclosure likely to adversely affect the School's proper functioning and discourage openness in expressing opinions?
Is disclosure likely to reduce further enquiries on the topic?	If a large amount of information on the topic has already been made available, would further disclosure shed any more light or serve any useful purpose?

Note also that:

- potential or actual embarrassment to, or loss of confidence in, the School, staff or members is NOT necessarily a valid factor
- the fact that the information is technical, complex to understand and may be misunderstood may not of itself be a reason to withhold information
- the potential harm of releasing information will reduce over time and should be considered at the time the request is made rather than by reference to when the relevant decision was originally taken
- the balance of the public interest in disclosure cannot always be decided on the basis of whether the disclosure of particular information would cause harm, but on certain higher order considerations such as the need to preserve confidentiality of internal discussions
- a decision not to release information may be perverse i.e. would a decision to withhold information because it is not in the public interest to release it, itself result in harm to public safety, the environment or a third party?

You will need to record the answers to these questions and the reasons for those answers. Deciding on the public interest is not simply a matter of adding up the number of relevant factors on each side. You need to decide how important each factor is in the circumstances and go on to make an overall assessment.

For Disclosure

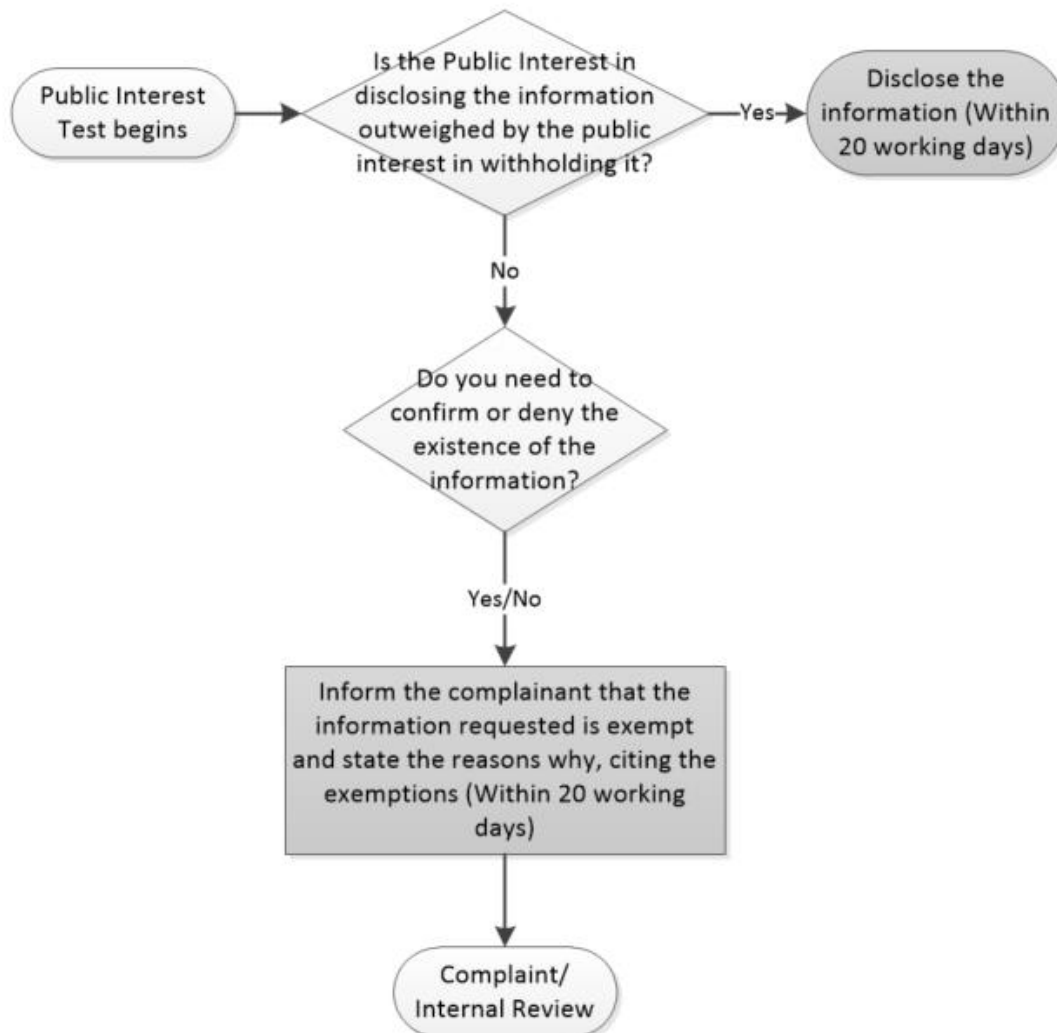
Where the balance of the public interest lies in disclosure, the enquiry should be dealt with and the information required should be made available. Where the factors are equally-balanced, the decision should usually favour disclosure (but see third bullet point above).

Against Disclosure

After carrying out the public interest test if it is decided that the exemption should still apply, proceed to reply to the request.

There will be occasions when it has been decided that a qualified exemption applies but consideration of the public interest test may take.

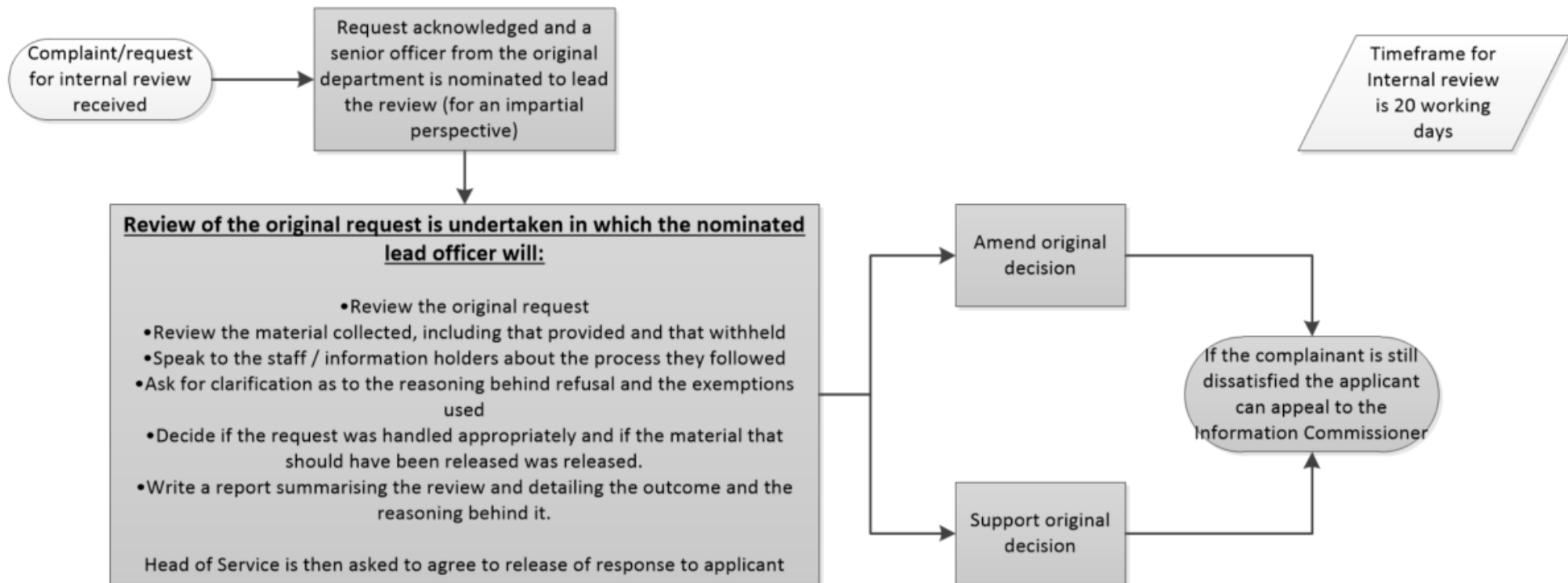
2.3: The Public Interest Test



Flowchart 2.3

2.4: Complaint / Internal Review

If the complainant is not happy with the initial solution to the request we will go to Complaint/Internal review stage. During this stage we have someone from the original department review why the request is not resolved within the original 18 hours



Flowchart 2.4

2.5 Internal Review checklist

	WHO	WHAT	
1	Head of Department	Allocates a senior member of the relevant department who has not previously been involved with the request to lead the review.	
2	Review Lead collects	<ul style="list-style-type: none"> • The Information Commissioner’s Guidance on Internal Reviews. 	
		<ul style="list-style-type: none"> • Details of Officers previously involved. 	
		<ul style="list-style-type: none"> • The original request. 	
		<ul style="list-style-type: none"> • Documents or correspondence reviewed when dealing with original request. 	
		<ul style="list-style-type: none"> • The response to the request. 	
3	Review Lead	<ul style="list-style-type: none"> • Reviews the original request. 	
		<ul style="list-style-type: none"> • Reviews the material collected, including that provided and that withheld. 	
		<ul style="list-style-type: none"> • Speaks to the staff / information holders about the process they followed. 	
		<ul style="list-style-type: none"> • Asks for clarification as to the reasoning behind refusal and the exemptions used. 	
		<ul style="list-style-type: none"> • Decides if the request was handled appropriately and if the material that should have been released was released. 	
		<ul style="list-style-type: none"> • Writes a report summarising the review and detailing the outcome (UPHOLD or REJECT) and the reasoning behind it. 	
		<ul style="list-style-type: none"> • Sends response to Head of Service for agreement to release outcome letter. 	
4	Head of Department	Reviews response and agrees release to applicant outcome letter, along with any supporting documentation.	
5	FOI Coordinator	Send details of the outcome (with supporting documentation if necessary) to applicant, specifying that if still dissatisfied, the applicant can appeal to the Information Commissioner. Close the case and record the date the original response was sent.	

3.0 Full list of Freedom of Information Act exemptions

- 4.1 Personal details should **always** be redacted, but other information can only be withheld if an exemption under the Act applies. If all or part of the information is refused, a refusal notice must be issued, quoting the exemption that has been used.
- 4.2 There are a number of exemptions; those that mostly apply to local authorities are listed below:

EXEMPTION CHECKLIST

Absolute Exemption	If information falls within one of the exemptions listed the authority can refuse the request without having to make a judgement as to whether it is in the public interest to do so. The authority is also relieved of the duty to confirm or deny if the information is held.
Prejudice exemptions	These require an initial judgement to be made on whether release of the information will prejudice the interests specified. If there is such prejudice, the public interest test should be applied. If there is no prejudice, the public interest test is unnecessary.
Qualified exemptions (public Interest test only)	These exemptions require a judgement to be made on whether the public interest in releasing the information outweighs the interest in withholding it. These exemptions are split in 2 sub-categories of prejudice test exemptions and class exemptions.

What	Exemption	Why
Is the information already in the public domain, i.e. it is on our website?	Section 21	Information reasonably available elsewhere, even if it has to be paid for, can be refused.
Is the information due to be published in the near future anyway (hard copy or on web)	Section 22	Material intended for future publication. If this exemption is used, it must be shown that it is reasonable for the applicant to wait (i.e. information is being compiled and will be published in the next month or so).
Is the Information supplied by, or relating to, bodies dealing with security matters	Section 23	Releasing this information can lead to criminal activities and or put individuals at risk of harm.

What	Exemption	Why
Investigations & proceedings conducted by public authorities	Section 30	Information obtained or recorded by the authority for the purposes of its functions relating to criminal proceedings which the authority has power to conduct and or it relates to the obtaining from confidential sources
Is the information relating to criminal investigations, or activity?	Section 31	Information that might prevent the detection of a crime or the apprehension of offenders does not have to be released. It could also include details of internal investigations that may lead to criminal prosecutions.
Does the information relate to court records?	Section 32	The release of court records remains at the discretion of the court themselves.
Is the information advice given to Members by Officers?	Section 36	<p>This applies where it is considered that disclosure would inhibit the free and frank provision of advice or the free and frank exchange of views for the purpose of deliberation or otherwise prejudice the effective conduct of public affairs.</p> <p>Note:</p> <p>The decision as to whether information falls within this section is currently the responsibility of the “qualified person”. That is the Chief Executive or the Borough Solicitor ONLY and cannot be delegated by them to others.</p> <p><i>The Independent Commission on Freedom of Information has recommended that this be amended to remove this requirement.</i></p>
Will release of this information prejudice the health and safety of the public or employees?	Section 38	For example, names staff who deal with aggressive or potentially violent individuals.
Is the information about the environment?	Section 39	This is covered by the EIRs instead.

What	Exemption	Why
<p>Is the information about the applicant themselves?</p> <p>Does the information contain personal details, such as name, date of birth, home address etc.?</p>	Section 40	<p>If the information is about the person making the request it automatically becomes a Data Protection Act 2018 (DPA) request and the DPA provisions apply. The request should be refused, and reopened as a Subject Access Request.</p>
<p>Is the information about someone other than the applicant?</p>	Section 40(2)	<p>If the information is about a person who is not the applicant, the request must be considered under FOI but with DPA given consideration.</p> <p>Only personal information, i.e. relating to a person's private life is exempt – not work or official activities. Most personal information is covered by the absolute exemption but Section 40(2) relates to personal information about a third party and Section 10 of the DPA so includes, for example, information about an official's public role.</p>
<p>Was the information clearly provided in confidence?</p>	Section 41	<p>This applies ONLY if the disclosure would be an actionable breach of confidence and the information must have been provided in circumstances where it is clear it is being given in confidence.</p>
<p>Was the information guidance provided by internal legal officers?</p>	Section 42	<p>Legal Professional Privilege. This applies to internal legal advice documents but release or not should be checked with Legal, especially if there is a wide distribution list.</p>
<p>Is the information likely to damage the School or other's commercial interests?</p>	Section 43	<p>This covers both trade secrets and information that could otherwise prejudice a company or the authority's commercial interests.</p> <p>This is unlikely to apply to most information covered by a contract or a tender other than the company's profit margins but consideration should be given to the timing of the request.</p>
<p>Is it legally prohibited to release the information?</p>	Section 44	<p>This covers other legislation preventing disclosure, or where disclosure would be a contempt of court.</p>

4.3 A request may also be refused if it is suspected that the applicant is using a pseudonym. This may be when:

- a request is being made by the applicant for his/her own personal data and so would be exempt under section 40(1) of the Act (and would comprise a subject access request under the Data Protection Act 2018);
- a requester is using a pseudonym to shield his/her identity in order to avoid the possibility of the request being considered as vexatious or repeated; or
- Determining whether to aggregate costs for two or more requests in accordance with the Fees Regulations.

4.4 If a request is likely to take in excess of 18 hours it can be refused, or a fee can be charged.

Not all of these exemptions will apply to a Local Authority

Section	FOI Exemption	What this means (These are not legal definitions – they are added to give an indication of exempt areas. A full definition should be consulted in the Act).	Status
12	Cost exceeds the appropriate limit	Section 12 states that public authorities don't have to comply with requests where they estimate that the cost of compliance will exceed the "appropriate limit" The appropriate limit is £450. Staff time must be calculated at £25 per hour. When applying this exemption there must be proof of how you have come to this conclusion.	Absolute
21	Information accessible to applicant by other means	This relates to information that is reasonably accessible to an applicant (e.g. via the publication scheme or openly available in public libraries)	Absolute
22	Information intended for future publication	This is for information with a planned publication date, or view to publication and withholding it is 'reasonable'.	Public Interest Test
23	Information supplied by, or relating to, bodies dealing with security matters	This is specific to bodies dealing with security matters. For a full list, please see a copy of the Act.	Absolute
24	National Security	This relates to information that should not be disclosed in the interest of National Security.	Public Interest Test
25	Certificates under ss. 23 and 24: supplementary provisions	These exemptions relate to the previous two security exemptions.	
26	Defence	Exemption applies to information relating to the defence of the British Islands or of any colony.	Public Interest Test
27	International relations	Exemption of release of information likely to impact international relations.	Public Interest Test
28	Relations within the United Kingdom	Exemption of release of information likely to impact internal administration relations.	Public Interest Test
29	The economy	Information likely to prejudice the economic interests or related of the UK.	Public Interest Test

Section	FOI Exemption	What this means (These are not legal definitions – they are added to give an indication of exempt areas. A full definition should be consulted in the Act).	Status
30	Investigations and proceedings conducted by public authorities	Information is exempt if it has at any time been held by the authority for the purposes of criminal investigations or proceedings, such as determining whether a person should be charged with an offence or whether a charged person is guilty, or investigations which may lead to a decision to institute criminal proceedings. The duty to confirm or deny does not apply to such information.	Public Interest Test
31	Law enforcement	This relates to specific law enforcement information i.e. prevention and detection of a crime.	Public Interest Test
32	Court records etc	Information held by the School only by virtue of that information being contained in a formal document filed with a court or tribunal, in a formal document served for the purposes of court or tribunal proceedings, or in a formal document created by a court or by staff of a court.	Absolute
33	Audit functions	This is where public authorities audit other public bodies and hold specific audit information.	Public Interest Test
34	Parliamentary privilege	Specific to Houses of Parliament privileges.	Absolute
35	Formulation of government policy, etc	Information held by a government Service Area or by the National Assembly for Wales is exempt information if it relates to: <ul style="list-style-type: none"> (a) the formulation or development of government policy; (b) Ministerial communications; (c) the provision of advice by any of the Law Officers or any request for the provision of such advice, or; (d) the operation of any Ministerial private office. 	Public Interest Test

Section	FOI Exemption	What this means (These are not legal definitions – they are added to give an indication of exempt areas. A full definition should be consulted in the Act).	Status
36	Prejudice to effective conduct of public affairs	The disclosure of this information would or would be likely to, inhibit: <ul style="list-style-type: none"> (a) the free and frank provision of advice, or (b) the free and frank exchange of views for the purposes of deliberation, or (c) would otherwise prejudice, or would be likely otherwise to prejudice, the effective conduct of public affairs. 	Absolute (If in the House of Lords or House of Commons) Public Interest Test otherwise
37	Communications with Her Majesty, etc. and honours	Specific exemptions related to information on the Royal Household.	Public Interest Test
38	Health and safety	Information is exempt if its disclosure would or would be likely to endanger the safety or physical or mental health of any individual.	Public Interest Test
39	Environmental Information	This is closely related to environmental legislation.	Public Interest Test
40	Personal Information	Where enquirers ask to see information about themselves, this is exempt under the Act because it is covered by the Data Protection Act 2018. Information is sought that constitutes personal data of which the applicant is not the data subject and the disclosure of which would contravene one of the data protection principles. In both situations this effectively puts request under the Data Protection Act 1998, rather than FOI. S40(3)(a)(i) personal information where the data subject has a right to prevent processing.	Absolute (except for s40(3)(a)(i)) which the Public Interest Test applies)
41	Information provided in confidence	This relates to releases that would result in a breach of confidence.	Absolute
42	Legal professional privilege	Information in respect of which a claim to legal professional privilege could be maintained. This exemption is specific to the legal profession.	Public Interest Test

43	Commercial interests	This relates to information containing trade secrets or commercial interests.	Public Interest Test
44	Information subject to a prohibition disclosure		Absolute

5.2 Summary of key actions and timescales

Stage	Key Action	Timescale	Who?	Other Actions
Ordinary Request	<ul style="list-style-type: none"> Deal with request as would for normal department queries 	10 working days to comply with School PI	Recipient of request.	
FOI Request	<ul style="list-style-type: none"> Forward details of enquiry to your FOI Coordinator by e-mail Original documentation also sent to FOI Coordinator 	1 working day	Recipient of request.	<ul style="list-style-type: none"> FOI Coordinator informs applicant that request will be processed in 20 working days.
Processing Request				
On Receipt	<ul style="list-style-type: none"> Check the FOI database to ensure that request has not already been logged If request has already been logged coordinate response with relevant department If not, log request onto the database Acknowledge receipt of request to applicant 	2 working days	FOI Coordinator	<p>The FOI Coordinator:</p> <ul style="list-style-type: none"> keeps applicant informed of progress Provides advice and assistance if required

Stage	Key Action	Timescale	Who?	Other Actions
Accessing information	<ul style="list-style-type: none"> Identification of person(s) holding relevant information 	2 working days	FOI Coordinator	<p>The Information Holder:</p> <ul style="list-style-type: none"> Decides if a fee/charge is applicable Decides if request can be met within applicable limits set in Fees Regulations Determines if information is exempt Determines if request is repeated or vexatious
Accessing Information (cont.)	<ul style="list-style-type: none"> Locate and provide relevant information to FOI Coordinator <p><i>Note: Timescale suspended if insufficient information provided by applicant to identify and locate information requested</i></p>	5 working days	Information Holders	
	<ul style="list-style-type: none"> Additional time granted if information difficult to retrieve 	5 working days	FOI Coordinator	
	<ul style="list-style-type: none"> Information reviewed in respect of fees/charges <p><i>If a fee or charge is applicable to the information requested a Fees Notice/notification of a charge will be issued. The 20 working day timescale is suspended until the fee/charge is paid</i></p> <ul style="list-style-type: none"> Information reviewed in respect of exemptions 	<p>1 working day</p> <p>2 working days</p>	<p>Information Holder</p> <p>Information Holder</p>	<ul style="list-style-type: none"> Provides advice and assistance in the event of applicant being unable/unwilling to pay fee/charge If an exemption is applicable the FOI Coordinator will issue a notice informing the applicant of this If a request is refused for any other reason, the FOI Coordinator will notify the applicant of this

Stage	Key Action	Timescale	Who?	Other Actions
Clearance to release	<ul style="list-style-type: none"> Head of Department reviews the information collected and agrees to its release 	1 working day	Head of Department	<ul style="list-style-type: none"> Requests changes if necessary
Providing Information	<ul style="list-style-type: none"> The Information holder or FOI Coordinator should ensure redactions are carried out appropriately where exemptions have been applied in accordance with the ICO's guidance on 'How to disclose information safely'. Where information is in excel format, extra care must be taken to ensure there are <u>no hidden personal data</u> within the rows and columns of the spreadsheet, (which can easily occur with pivot tables and charts). Where previous templates are used for responding, care must be taken to ensure all references to previous recipient is removed from the template. Information is provided to applicant Request closed on database. All relevant correspondence sent through. 	3 working days	Information Holder	<ul style="list-style-type: none"> FOI Coordinator will consider the preferences of the applicant in regard to the format in which they wish to receive the information they have requested

4.0 Frequently asked questions

4.1 Are Governors or members of staff allowed to make a Freedom of Information request?

Yes – the Act requires us to be applicant blind. That means that as long as the information that has been requested is recorded in some way, anyone, anywhere, can ask for it.

4.2 What if my School Department doesn't hold all the information? Can I say it isn't held?

No – the request has been made to the School, not to the School Department. If your department does not hold it, you should check with the other School Department to see if they do. The easiest way to do this is to forward the request to the relevant School Department in question to ask them to check, collect and return any information held to you for incorporation in the final response.

4.3 I'm leading a multi department request and I have information from one department ready to go, but I am still waiting for information from other departments. Can I send it off?

No - It can be confusing for an applicant to get their information in this way and may lead to complaints and internal reviews. The best option is to contact the service directly and chase them up for a response.

However, on some occasions the applicant will state in their request that they wish to receive information as it becomes available, and if this is the case you should send your response to them in this way.

4.4 This request is just a phishing exercise from a journalist – do we have to do this?

Yes – the Act requires us to be applicant blind. That means that if the information that has been requested is recorded in some way, anyone, anywhere, can ask for it regardless of what they plan to do with it.

4.5 I am too busy to deal with this pointless request. Can I leave it until I have more time?

No – the Freedom of Information Act is a law. That means we are legally required to respond to a valid request within 20 working days in order to comply with it.

4.6 This is the 6th request I've had from this applicant – he is asking for the same thing each time, just in a different order! I've given him everything we have; can I ignore him??

It is important to remember that under Freedom of Information, the applicant is not vexatious, the request is. Just because there have been multiple requests from the same applicant this is not justification to refuse their requests. We can, however, refuse requests that are repeated or can be considered vexatious as long as they are for the same information. If the request is the same, but for a different year or the information has changed or has been updated since the requestors last request, it is not a repetitious request and should be handled as normal.

4.7 The applicant has asked for sets of figures – can I PDF them so they can't alter the information?

No – under the revised Transparency Code, public bodies are required to provide information in a format that can be manipulated. Compliance with the Code is mandated under section 2 of the Local Government, Planning and Land Act 1980. The code came into effect on 31 October 2014.

The LGA has produced a useful guidance document regarding this, which can be found here: [Guide to Transparency](#)

4.8 Can I get an extension? I need more time.

Generally, we can't ask for an extension unless it is to consider the public Interest test. However, if the request isn't clear, we can "stop the clock" while we wait for clarification. This means that the 20 working days goes on hold until it is received. So, if you have 10 days left when you ask for clarification and stop the clock, it means that when the applicant replies, you still have 10 days left. If no clarification is received, the request can be given a partial response and then closed. It is important to ask for clarification as soon as possible – if you don't ask until day 19, you will only have 1 day to collect the information and provide the response when you get the reply and start the clock again! If the authority needs further details to identify or locate the information, then the 20 working days will commence the day after it receives the required clarification from the requester.

4.9 Is there any information on GDPR and its' connections to how we deal with FOIs'?

You can find information about GDPR [here](https://ico.org.uk/for-organisations/local-government). [https://ico.org.uk/for-organisations/local-government]